

REMARKS

Applicant submits these Remarks in reply to the Office Action mailed April 17, 2008 ("Office Action"). Claims 1-30 are pending in this application, of which claims 1, 11, and 21 are independent. Applicant has amended claims 1, 11, and 21-27 as provided above. By this Amendment, no new matter has been introduced.

In the Office Action, the Examiner took the following actions:

- (1) objected to the oath or declaration for being defective;
- (2) rejected claims 2, 3, 12, 13, 22, and 23 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement;
- (3) rejected claims 21-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention;
- (4) rejected claims 1, 2, 7, 11, 12, 17, 21, 22, and 27¹ under 35 U.S.C. § 102(b) as being anticipated by Strozniak, "Sharing the Load" ("*Strozniak*"); and
- (5) rejected claims 3-6, 8-10, 13-16, 18-20, 23-26, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over *Strozniak*.

Applicant respectfully traverses these rejections as follows.

¹ The Examiner only listed claims 1, 2, 7, 11, 12, and 17 as rejected under 35 U.S.C. § 102(a), but included claims 21, 22, and 27 in the analysis.

I. Objection to the Oath or Declaration

Applicant has attached an application datasheet that identifies the mailing address of the named inventor and otherwise complies with 37 C.F.R. § 1.67(a). Applicant, therefore, requests the Examiner to remove the objection to the oath or declaration.

II. 35 U.S.C. § 112, first paragraph

The Examiner rejected claims 2, 3, 12, 13, 22, and 23 under 35 U.S.C. § 112, first paragraph, because, according to the Examiner, "[t]he claim[s] contain[] subject matter which was not described in the specification in such a way as to enable one skilled in the art . . . to make and/or use the invention." Office Action at 2-3. In particular, the Examiner stated that "[i]t is not clear based on the specification how the loads are analyzed to set a first accent point at a cluster of location[s]." *Id.* at 3.

Contrary to this assertion, Applicant respectfully contends the rejected claims are enabled by various exemplary disclosures throughout the specification. For example, paragraph [44] states, in part:

[A]ccent points . . . may be defined by a general geographic area . . . or by a zip code. [A]ccent points . . . may be determined based on a weighting of clustered loads delivered [to] or originated from around that map location. *Accent points may be manually created based on a traffic planner[s] input or may be created automatically as the systems of the present invention monitor a threshold level of origination or destination traffic located about a point.*

Accent points are also discussed in paragraph [50], which states, in part:

The accent point may be manually entered by the user or selected from a list of accent point[s] already in the system. The user may elect at any point in time in the schematic creation process to create a new accent point, typically defined by a zip code. In addition, *the system may automatically create accent points based on clustered locations of a threshold level or origination or destination activity.*

Provided the information above and elsewhere throughout the specification, one of ordinary skill in the art would have been able to implement “setting the first accent point at a cluster of origination or destination locations” and, furthermore, setting the first accent point “if the cluster of origination or destination locations exceed a threshold value,” as claimed.

Consequently, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 112, first paragraph, rejections of claims 2, 3, 12, 13, 22, and 23.

III. 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 21-27 under 35 U.S.C. § 112, second paragraph, alleging that “[t]he use of the phrase ‘capable of’ is indefinite.” Office Action at 3. Applicant amended these claims to address this issue. Therefore, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 112, second paragraph, rejections.

IV. 35 U.S.C. § 102(b)

Applicant respectfully traverses the Examiner's rejection of claims 1, 2, 7, 11, 12, 17, 21, 22, and 27 under 35 U.S.C. § 102(b) because *Strozniak* does not anticipate those claims, as amended. To establish that *Strozniak* anticipates Applicant's claims under 35 U.S.C. § 102(b), the Examiner must show that *Strozniak* discloses the “identical invention . . . in as complete detail as is contained in the . . . claim.” See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Additionally, the “elements must be arranged as required by the claim.” See M.P.E.P. § 2131, citing *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As shown below, *Strozniak* does not disclose the identical invention as claimed, and Applicant respectfully traverses the rejection.

A. *Strozniak* does not disclose “analyz[ing] past load history based on dedicated and common carrier rates, the past load history having a plurality of load data, wherein the load data has an origination location and a destination location.”

Amended independent claims 1, 11, and 21 recite, among other things, “analyz[ing] past load history based on dedicated and common carrier rates, the past load history having a plurality of load data, wherein the load data has an origination location and a destination location.” *Strozniak* does not disclose this subject matter. The portion of *Strozniak* cited by the Examiner prior to this Amendment reads as follows:

To address the problem the manufacturers' alliance used the Nistevo network to *match routes* that essentially would create round-trip or dedicated tours between manufacturers. In other words, carriers would be guaranteed a truckload on their return trips, which reduces the cost for manufacturers because the trucks are not returning empty. This allows a carrier to provide a rate reduction to both manufacturers. Additionally, it increases the profit margins of carriers because of better asset utilization. What's more, it helps reduce turnover of drivers who no longer have to scramble to fill their trucks on the return trip. At the same time, service improves because drivers become familiar with the routes and develop business relationships with both the shippers and their customers.

Strozniak, p. 4, ¶ 3 (emphasis added).

The Examiner summarized this passage as stating that “loads are analyzed to create shared routes between manufacturers.” Office Action, p. 4. However, the passage includes no mention of *load analysis*. Instead, the passage merely states that the network is used to “match routes” and “create round-trip or dedicated tours between manufacturers.”

Further distinguishing Applicant's amended independent claims 1, 11, and 21, those claims recite that analysis of past load history is “based on dedicated and

common carrier rates.” *Strozniak* fails to disclose, teach, or even suggest load analysis “based on dedicated and common carrier rates.”

For at least these reasons, *Strozniak* does not disclose, teach, or suggest all recitations of Applicant's amended independent claims 1, 11, and 21.

B. *Strozniak* does not disclose “automatically creat[ing] the tour schematic based on analysis of the past load history.”

Amended independent claims 1, 11, and 21 also recite, among other things, “automatically creat[ing] the tour schematic based on analysis of the past load history.” *Strozniak* does not disclose this subject matter. Prior to this Amendment, the Examiner cited *Strozniak*, p. 4, ¶ 3, which is reproduced above in Part IV.A.

The Examiner summarized this disclosure as stating that “loads are analyzed to create shared routes between manufacturers.” Office Action, p. 4. Although *Strozniak* discusses a process of “match[ing] routes” to “create round-trip or dedicated tours between manufacturers,” the disclosure does not discuss “analysis of the past load history,” as claimed by Applicant. The rest of *Strozniak* is also silent with regard to this recitation.

Further distinguishing Applicant's amended independent claims 1, 11, and 21, those claims recite that the tour schematic is created “*automatically* . . . based on analysis of the past load history.” Not only does *Strozniak* omit “analysis of past load history” from its discussion of the creation of “round-trip or dedicated tours between manufacturers,” but *Strozniak* also fails to disclose, teach, or suggest a method by which creation of tours or tour schematics is *automatic*.

For at least these additional reasons, *Strozniak* does not disclose, teach, or suggest all recitations of Applicant's amended independent claims 1, 11, and 21.

C. The 35 U.S. C. § 102(b) rejections should be withdrawn.

As shown above, *Strozniak* does not disclose at least one recitation of independent claims 1, 11, and 21. Because Applicant's dependent claims 2, 7, 12, 17, 22, and 27 each necessarily contain the recitations of independent claims 1, 11, and 21, *Strozniak* also does not disclose all recitations of those claims. Consequently, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 102(b) rejections based on *Strozniak* with respect to claims 1, 2, 7, 11, 12, 17, 21, 22, and 27.

V. 35 U.S.C. § 103(a)

Applicant respectfully traverses the Examiner's rejections of claims 3-6, 8-10, 13-16, 18-20, 23-26, and 28-30 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established with respect to these claims.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences *themselves* would have been obvious, but whether the claimed invention *as a whole*

would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

As noted above in Part IV, *Strozniak* does not teach, suggest, or disclose “analyz[ing] past load history based on dedicated and common carrier rates,” or “automatically creat[ing] the tour schematic based on analysis of the past load history,” as claimed by Applicant in amended independent claims 1, 11, and 21. The Office Action also does not clearly articulate any reason why one of ordinary skill in the art would have improved upon *Strozniak* to arrive at the amended claims 1, 11, and 21. Therefore, no *prima facie* case of obviousness exists for those claims.

Dependent claims 3-6, 8-10, 13-16, 18-20, 23-26, and 28-30 each necessarily contain the recitations of amended independent claims 1, 11, and 21. Consequently, no *prima facie* case of obviousness exists with respect to claims 3-6, 8-10, 13-16, 18-20, 23-26, and 28-30. Applicant, therefore, respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of claims 3-6, 8-10, 13-16, 18-20, 23-26, and 28-30.

VI. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims. Should the Examiner still have any questions regarding the patentability of Applicant's claims after reading the above, please call the undersigned representative below.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: _____



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